Reno v. Flores

Reno v. Flores, 507 U.S. 292 (1993),[1] was a Supreme Court of the United States case in which the Court held that the Immigration and Naturalization Service's regulations regarding the release of alien unaccompanied minors did not violate the Due Process Clause of the United States Constitution.

In 1997, after the Supreme Court remanded the matter to the United States District Court for the Central District of California, the parties agreed to a consent decree in which the litigation would end once the government implemented certain standards for the detention, treatment, and release of alien minors. The District Court for Central California continues supervision of the consent decree as of 2018.

In 2018 the consent decree was claimed by Trump administration as part of the basis of the Trump administration family separation policy.

Contents

Background

Lower court holdings
- Ninth Circuit panel
- Ninth Circuit en-banc

Supreme Court
- Opinion of the Court
- Holding
  - Concurrence
  - Dissent

1997 settlement agreement
- Terms of the agreement
- Subsequent history
- Trump administration family separation policy

See also

References

External links

Background

In 1985, Jenny Lisette Flores, an unaccompanied 15-year-old girl from El Salvador, was apprehended by the Immigration and Naturalization Service after illegally attempting to cross the Mexico-United States border.[2]:1648 The unaccompanied minor was taken to a detention facility where she was held among adults of both sexes, was daily strip searched, and was told she would only be released to the custody of her parents, who, INS suspected, were illegal

Reno v. Flores	
Supreme Court of the United States	
Argued October 13, 1992 **Decided March 23, 1993**	
Full case name	*Janet Reno, Attorney General, et al. v. Jenny Lisette Flores, et al.*
Citations	507 U.S. 292 (https://supreme.justia.com/us/507/292/case.html) (*more*) 113 S. Ct. 1439; 123 L. Ed. 2d 1; 1993 U.S. LEXIS 2399; 61 U.S.L.W. 4237; 93 Cal. Daily Op. Service 2028; 93 Daily Journal DAR 3628; 7 Fla. L. Weekly Fed. S 73
Case history	
Prior	942 F.2d 1352 (https://law.justia.com/cases/federal/appellate-courts/F2/942/1352/282325/) (9th Cir. 1991); cert. granted, 503 U.S. 905 (1992).
Holding	
INS regulation—which provides that alien juveniles detained on suspicion of being deportable may be released only to a parent, legal guardian, or other related adult—accords with both the Due Process Clause and the Immigration and Nationality Act.	
Court membership	
Chief Justice	

immigrants.[3] On July 11, 1985, the Center for Human Rights and Constitutional Law filed a class action lawsuit against U.S. Attorney General Edwin Meese, alleging that the government's detention and release policies were in violation of the children's rights under the Equal Protection Clause and the Due Process Clause of the United States Constitution.[2]:1648[4]

In 1987, the parties agreed to a consent decree regarding detention conditions but the United States District Court for the Central District of California granted summary judgment to the plaintiffs regarding the release conditions.[5]:35 On March 7, 1988, U.S. District Judge Robert J. Kelleher found that the INS policy to strip search children was unconstitutional.[6] On May 25, 1988, District Judge Kelleher rejected the release conditions INS had promulgated through rulemaking, removing limitations on which adults could receive the children and requiring all children to receive a hearing from an immigration judge.[7] In June 1990, United States Court of Appeals for the Ninth Circuit Judge John Clifford Wallace, joined by Judge Lloyd D. George, reversed, over the dissent of Judge Betty Binns Fletcher.[8] In August 1991, the Ninth Circuit *en banc* majority overturned its earlier panel opinion and affirmed Judge Kelleher's order against the government, over the dissent of Judges Wallace, Charles E. Wiggins, Melvin T. Brunetti, and Edward Leavy.[9]

William Rehnquist	
Associate Justices	
Byron White · Harry Blackmun John P. Stevens · Sandra Day O'Connor Antonin Scalia · Anthony Kennedy David Souter · Clarence Thomas	
Case opinions	
Majority	Scalia, joined by Rehnquist, White, O'Connor, Kennedy, Souter, and Thomas
Concurrence	O'Connor, joined by Souter
Dissent	Stevens, joined by Blackmun
Laws applied	
8 U.S.C.S. 1252(a)(1)	

Lower court holdings

The District Court

> (1) granted the INS partial summary judgment on the statutory and international law release grounds;
> (2) approved a consent decree that settled all claims regarding detention conditions; and
> (3) granted the class partial summary judgment on an equal protection claim as to release.

In 1988, the INS promulgated a regulation, codified as to deportation at 8 CFR 242.24, which

> (1) generally authorized the release of a detained alien juvenile, in order of preference, to a parent, a legal guardian, or specified close adult relatives of the juvenile, unless the INS determined that detention was required to secure an appearance or to ensure the safety of the juvenile or others;
> (2) in limited circumstances, authorized discretionary consideration of the release of a juvenile to another person who executed an agreement to care for the juvenile and to ensure the juvenile's attendance at future immigration proceedings; and (3) for unreleased juveniles, generally required a suitable placement at a facility which, in accordance with the consent decree, had to meet specified care standards.

A week after the regulation took effect, however, the District Court, invalidating the regulatory scheme on due process grounds,

> (1) ordered the INS to release any otherwise eligible juvenile to a parent, guardian, custodian, conservator, or "other responsible adult party";
> (2) dispensed with the INS condition that an unrelated custodian agree to care for such a juvenile, as well as to ensure the juvenile's attendance at future proceedings; and
> (3) revised the INS' review procedures by decreeing that an immigration judge hearing on probable cause and on release restrictions was to be provided "forthwith" after arrest, regardless of whether a juvenile requested it.

Ninth Circuit panel

On appeal, a panel of the United States Court of Appeals for the Ninth Circuit, in reversing, concluded that

> (1) the INS did not exceed its statutory authority in promulgating 242.24;
> (2) 242.24 did not violate substantive due process, under the Federal Constitution's Fifth Amendment; and
> (3) a remand was necessary with respect to a procedural due process claim (934 F2d 991).

Ninth Circuit en-banc

An 11-judge en banc court, designated pursuant to a Court of Appeals rule, then

> (1) cited federal constitutional grounds including due process;
> (2) vacated the panel opinion; and
> (3) affirmed the District Court's order in all respects (942 F2d 1352).

Supreme Court

On October 13, 1992, oral arguments were heard before the U.S. Supreme Court, where Deputy Solicitor General Maureen Mahoney appeared for the government.[10]

Opinion of the Court

On March 23, 1993, the Supreme Court announced judgment in favor of the government, voting 7–2 to reverse the lower court.[11] Justice Antonin Scalia, joined by Chief Justice William Rehnquist, and Justices Byron White, Sandra Day O'Connor, Anthony Kennedy, David Souter, and Clarence Thomas, held that the unaccompanied alien children had no constitutional right to be released to someone other than a close relative, nor to automatic review by an immigration judge.[12]

Holding

On certiorari, the United States Supreme Court reversed the judgment of the Court of Appeals and remanded the case for further proceedings. In an opinion by Scalia, J., joined by Rehnquist, Ch. J., and White, O'Connor, Kennedy, Souter, and Thomas, JJ., it was held that 242.24, on its face,

> (1) did not violate substantive due process, under the Fifth Amendment, through asserted infringement of an allegedly "fundamental" liberty interest, that is, an alleged right of a child who had no available parent, close relative, or legal guardian, and for whom the government was responsible, to be placed in the custody of a willing and able private custodian rather than the custody of a government-operated or government-selected child care institution, because
>
> > (a) if there existed such a fundamental right, then it would presumably apply to state custody over orphaned and abandoned children as well,
> > (b) such an alleged right was novel,
> > (c) under the circumstances, such continued government custody was rationally connected to a government interest in promoting juveniles' welfare and was not punitive,
> > (d) there was no constitutional need to meet even a more limited demand for an individualized hearing as to whether private placement would be in a juvenile's "best interests," so long as institutional custody was good enough, and

(e) any doubts as to the constitutionality of retaining such custody were eliminated as to alien juveniles;

(2) did not violate any "equal protection guarantee" in the Fifth Amendment, through

(a) releasing alien juveniles with close relatives or legal guardians, while detaining those without, or
(b) releasing juveniles to unrelated adults pending federal delinquency proceedings, but detaining unaccompanied alien juveniles pending deportation hearings;

(3) did not violate procedural due process, under the Fifth Amendment, through

(a) failing to require the INS to determine in the case of each alien juvenile that detention in INS custody would better serve the juvenile's interests than release to some other "responsible adult,"
(b) not providing for automatic review by an immigration judge of initial INS deportability and custody determinations, or
(c) failing to set a time period within which an immigration judge hearing, if requested, had to be held; and

(4) did not go beyond the scope of the Attorney General's discretion under 1252(a)(1) to continue custody over arrested aliens, because 242.24 rationally pursued the lawful purpose of protecting the welfare of such juveniles.

Concurrence

O'Connor, J., joined by Souter, J., concurring, concluded that

(1) the detained children in question had a constitutionally protected interest in freedom from institutional confinement, which interest lay within the core of the due process clause; and
(2) the Supreme Court did not hold otherwise, but reversed the Court of Appeals' decision because the INS program in question complied, on the program's face, with the requirements of due process.

Dissent

Stevens, J., joined by Blackmun, J., dissenting, expressed the view that

(1) the litigation history of the case at hand

(a) cast doubt on the good faith of the government's asserted interest in the welfare of such detained alien juveniles as a justification for 242.24, and
(b) demonstrated the complete lack of support, in either evidence or experience, for the government's contention that detaining such juveniles, when there were "other responsible parties" willing to assume care, somehow protected the interests of those juveniles;

(2) an agency's interest in minimizing administrative costs was a patently inadequate justification for the detention of harmless children, even when the conditions of detention were "good enough"; and
(3) 242.24, in providing for the wholesale detention of such juveniles for an indeterminate period without individual hearings,

(a) was not authorized by 1252(a)(1), and
(b) did not satisfy the federal constitutional demands of due process.

1997 settlement agreement

On January 28, 1997, during the administration of President Bill Clinton, the parties agreed to a consent decree regarding immigration detention standards for children and in which the government agreed to keep children in the least restrictive setting possible and to ensure the prompt release of children from immigration detention.[2]:1650 The settlement is officially called the **Flores v. Reno Settlement Agreement**,[13] and officially abbreviated as the ***Flores Agreement***.[13] It is also unofficially referred to as the ***Flores Settlement*** and as the ***Flores v. Reno Agreement***.[14][15][16]

Terms of the agreement

The Flores Agreement set national policy for the detention, release and treatment of minors in the custody of the Immigration and Naturalization Service.[16] According to the legal nonprofit Human Rights First, the Agreement "imposed several obligations on the immigration authorities, which fall into three broad categories":

> 1. The government is required to release children from immigration detention without unnecessary delay to, in order of preference, parents, other adult relatives, or licensed programs willing to accept custody.
> 2. If a suitable placement is not immediately available, the government is obligated to place children in the "least restrictive" setting appropriate to their age and any special needs.
> 3. The government must implement standards relating to the care and treatment of children in immigration detention.[17]

The Flores Agreement "set standards for the detention of minors by prioritizing them for release to the custody of their families and requiring those in federal custody to be placed in the least restrictive environment possible," according to NBC News in 2018.[18] Immigration officials agreed to provide detained minors with:

> 1. food and drinking water as appropriate,
> 2. medical assistance if minor is in need of emergency services,
> 3. toilets and sinks,
> 4. adequate temperature control and ventilation,
> 5. adequate supervision to protect minors from others,
> 6. contact with family members who were arrested with the minor and
> 7. separation from unrelated adults whenever possible.[19][14]

Immigration officials agreed to release minors "without unnecessary delay" when detention isn't required to protect the safety and well-being of the minor or to secure the timely appearance of the minor at a proceeding before immigration authorities, that is, when officials release the minor to a parent or guardian who agree to appear, and the minor is not a flight risk.[16] The Agreement prioritized the preferred situations into which minors are to be released:

> 1. to a parent;
> 2. a legal guardian;
> 3. an adult relative; or
> 4. an adult individual or entity designated by the parent or legal guardian.

Failing these, the minor may be released to an adult or other entity seeking custody or sent to a state-licensed detention program.[16][20][21]

Immigration officials agreed to provide minors with contact with family members with whom they were arrested, and to "promptly" reunite minors with their families. Efforts to reunify families are to continue as long as the minor is in custody.[16][15] The Agreement did not stipulate that the government separate children from their parents.[22]

The Flores settlement does, however, require that "Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors" and "...such minor shall be placed temporarily in a licensed program ... at least until such time as release can be effected ... Or until the minor's immigration proceedings are concluded, whichever occurs earlier". This leaves immigration officials in a difficult position, as there are few facilities designed to hold families.

Subsequent history

The parties agreed the litigation would terminate once the government finalized regulations complying with the settlement. Because the government has not yet finalized any such regulations, the litigation is ongoing. Compliance with the settlement has been the subject of criticism and litigation, resulting in extensions and modifications.[19][23] In 2001 the United States Department of Justice Office of the Inspector General concluded "Although the INS has made significant progress since signing the *Flores* agreement, our review found deficiencies with the implementation of the policies and procedures developed in response to *Flores*."[23]

In November 2002, President George W. Bush signed into law the Homeland Security Act, which abolished the INS and removed responsibility for unaccompanied alien minors from the Justice Department.[19] The new United States Department of Homeland Security was given responsibility for the apprehension, transfer, and repatriation of illegal aliens while the Office of Refugee Resettlement inside the United States Department of Health and Human Services was given responsibility for the unaccompanied alien minors' care, placement, and reunification with their parents.[19] In 2005 the Bush administration launched Operation Streamline, which referred all illegal immigrants for prosecution, but exempted those traveling with children.[24]

In 2008, President Bush signed into law the William Wilberforce Trafficking Victims Protection Reauthorization Act, a reauthorization of the Victims of Trafficking and Violence Protection Act of 2000, which codified some of the standards in the Flores Agreement. The Act provided for the expedited repatriation of unaccompanied alien minors to contiguous nations Mexico and Canada, while exempting unaccompanied children from El Salvador, Guatemala and Honduras from expedited repatriation in order to provide some protection to victims of human trafficking.[19][20][25][21]

Attempting to comply with the Agreement by keeping families together while coping with the 2014 American immigration crisis, a surge of refugees fleeing violence in Central America, the Department of Homeland Security under President Barack Obama built family detention centers in Pennsylvania and Texas.[26][27][24] On July 24, 2015, U.S. District Judge Dolly M. Gee of the Central District of California found that the consent decree applied equally to accompanied and unaccompanied minors and that immigration officials violated the consent decree by refusing to release accompanied minors held in a family detention facility.[5][28][29][21] The court ordered the release of 1700 families that were not flight risks.[27][30][31] The government said an average of 20 days was required for adjudication of "credible fear" and "reasonable fear" claims, among the grounds for asylum in the United States, and on August 21, 2015 Judge Gee clarified the "without unnecessary delay" and "promptly" language in the Flores settlement, ruling that holding parents and children for up to 20 days "may fall within the parameters" of the settlement.[28][32][33] In 2016, in *Flores v. Lynch*, Ninth Circuit Judge Andrew Hurwitz, joined by Judges Michael J. Melloy and Ronald M. Gould, reversed in part, finding that the Agreement applied to all detained children but that it did not give their parents any affirmative right of release.[34][5][21][35] District Judge Gee next issued an enforcement order against the government and, on July 5, 2017, in *Flores v. Sessions*, Ninth Circuit Judge Stephen Reinhardt, joined by Judges A. Wallace Tashima, and Marsha Berzon, affirmed, finding that Congress had not abrogated the Agreement through subsequent legislation.[36][37]:181

Trump administration family separation policy

Presidential candidate Donald Trump said ending what he called the Obama administration's policy of "catch and release" was the second of his two priorities for immigration reform, after walling off Mexico.[38][39] In the first 15 months of the administration of President Trump, nearly 100,000 immigrants apprehended at the United States-Mexico border were released, including more than 37,000 unaccompanied minors and 61,000 family members.[40][41]

The Flores Agreement received increased public attention in June 2018 when Trump, his administration, and supporters cited the Agreement and Democratic recalcitrance as justification for the Trump administration family separation policy, in which all adults detained at the U.S.–Mexico border were prosecuted and sent to federal jails while children and infants were placed under the supervision of the U.S. Department of Health and Human Services (DHHS).[42] In June 2018 Vox Media summarized the administration's interpretation of the settlement as since the government "cannot keep parents and children in immigration detention together, it has no choice but to detain parents in immigration detention (after they've been criminally prosecuted for illegal entry) and send the children to" DHHS as "unaccompanied alien children."[35] On May 26, 2018 Trump tweeted, "Put pressure on the Democrats to end the horrible law that separates children from there parents once they cross the Border into the U.S."[43] No law or court order mandated the separation of children from their families.[43][40][26][29] On May 29, 2018 White House senior policy advisor Stephen Miller told reporters, "A nation cannot have a principle that there will be no civil or criminal immigration enforcement for somebody traveling with a child. The current immigration and border crisis, and all of the attendant concerns it raises, are the exclusive product of loopholes that Democrats refuse to close."[43] Miller cited the Flores Settlement and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.[20]

On June 11, 2018 Republican Senator from Texas Ted Cruz said in a Dallas public radio interview "There's a court order that prevents keeping the kids with the parents when you put the parents in jail." PolitiFact fact-checked Cruz's statement, concluding it was "mostly false."[15]

On June 14, 2018, White House press secretary Sarah Huckabee Sanders told reporters, "The separation of illegal alien families is the product of the same legal loopholes that Democrats refuse to close. And these laws are the same that have been on the books for over a decade. The president is simply enforcing them," Republican Representative from Wisconsin and Speaker of the House Paul Ryan told reporters "What's happening at the border in the separation of parents and their children is because of a court ruling," and Republican Senator from Iowa Chuck Grassley tweeted "I want 2 stop the separation of families at the border by repealing the Flores 1997 court decision requiring separation of families." *The New York Times* said "there is no decades-old law or court decision that requires" separating migrant children from their parents.[26] On June 19, 2018 White House Legislative Affairs Director Marc Short told reporters the Trump administration had sought legislative relief from Congress on the Flores Settlement, saying "In each and every one of our negotiations in the last 18 months, all the immigration bills, we asked for resolution on the Flores settlement that is what we view requires 20 days before you have to release children and basically parents been released with children into society."[18]

On June 20, 2018, Trump signed an executive order reversing the family separation policy, directing the United States Armed Forces to make room available on military bases for family detention, and directing United States Attorney General Jeff Sessions to request modification of the Flores Settlement. On June 21, 2018 United States Department of Justice officials filed a motion in the court which oversees the settlement, the United States District Court for the Central District of California in Los Angeles of Judge Dolly M. Gee, requesting flexibility on the provisions of the settlement requiring state licensing of family detention centers and limiting detention of immigrant children to 20 days, in order to detain families for the duration of their immigration court proceedings.[44][45][46] On July 9, 2018, Gee rejected the request, citing that there was no basis to modify the agreement and pointing out that it is an issue the legislative branch has to solve instead.[47]

See also

- List of United States Supreme Court cases, volume 507
- Unaccompanied Alien Children

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External links

- Text of *Reno v. Flores*, 507 U.S. 292 (1993) is available from: Cornell (https://www.law.cornell.edu/supct/html/91-905.ZC.html) CourtListener (https://www.courtlistener.com/opinion/112833/reno-v-flores/) Findlaw (http://laws.findlaw.com/us/507/292.html) Google Scholar (https://scholar.google.com/scholar_case?case=1741861529469321635) Justia (http://supreme.justia.com/us/507/292/case.html) Library of Congress (http://cdn.loc.gov/service/ll/usrep/usrep507/usrep507292/usrep507292.pdf) Oyez (oral argument audio) (https://www.oyez.org/cases/1992/91-905)
- Text of *Flores v. Lynch*, 15-56434 (9th Cir. 2016) is available from: Findlaw (https://caselaw.findlaw.com/us-9th-circuit/1741116.html) Justia (https://law.justia.com/cases/federal/appellate-courts/ca9/15-56434/15-56434-2016-07-06.html) US Courts (https://cdn.ca9.uscourts.gov/datastore/opinions/2016/07/06/15-56434.pdf)
- Text of *Flores v. Meese*, 681 F. Supp. 665 (C.D. Cal. 1988) is available from: Justia (https://law.justia.com/cases/federal/district-courts/FSupp/681/665/1800754/)
- Flores v. Reno (later Meese, Johnson, Kelly, Sessions) (https://www.clearinghouse.net/detail.php?id=9493) Case page at the Civil Rights Litigation Clearinghouse of the University of Michigan Law School
- Case page (http://www.aila.org/infonet/flores-v-reno-settlement-agreement) at the American Immigration Lawyers Association

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